

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the “Agreement”) resolves and terminates the following lawsuits:

- (i) *Gleason v. San Diego City Employees’ Retirement System, et. al.*, San Diego County Superior Court Case No. GIC 803779 (“*Gleason*”), a class action lawsuit;
- (ii) *Gleason v. San Diego City Employees’ Retirement System*, San Diego County Superior Court Case No. GIC 810837 (“*Gleason II*”); and
- (iii) *Wiseman v. Board of Administration of the San Diego City Employees’ Retirement System*, San Diego County Superior Court Case No. GIC 811756 (“*Wiseman*”). The *Gleason*, *Gleason II*, and *Wiseman* lawsuits will collectively be referred to herein as the “Actions.”

The parties to this Agreement are:

1. James F. Gleason and David W. Wood, individually and on behalf of all persons who are no longer employed by the City of San Diego and are entitled to receive benefits from the San Diego City Employees’ Retirement System. Collectively, the plaintiffs in the *Gleason* class action may be referred to as the “Class Plaintiffs.”
2. James F. Gleason, individually.
3. Rosado Wiseman, individually.
4. The San Diego City Employees’ Retirement System and the Board of Administration of the San Diego City Employees’ Retirement System(“SDCERS”).
5. The City of San Diego together with its employees, representatives, attorneys, agents, Council members, and elected and appointed officials (collectively, the “City”).
6. Pursuant to this Agreement, the “Settlement Class” shall be defined as: “All persons who, as of April 6, 2004, were no longer employed by the City and are entitled to receive benefits from SDCERS, and their spouses, children, heirs, successors and assigns.”

Plaintiffs James F. Gleason, David W. Wood and Rosado Wiseman, individually, and the Settlement Class will collectively be referred to herein as the “Plaintiffs.” The City and SDCERS are sometimes collectively referred to herein as the “Defendants.”

The parties to this Settlement Agreement have stipulated to certify the Actions as a single class action for purposes of including all claims in the Actions in a single lawsuit, and the Court has approved the stipulation (“the Class Action”).

I. RECITALS

1. The plaintiffs in *Gleason* filed a putative class action complaint on January 16, 2003. Plaintiffs sought *inter alia* a judicial declaration that the City violated Article IX, Section 143 of the San Diego City Charter, and former San Diego Municipal Code section 24.0801 (as section 24.0801 existed prior to November 18, 2002). Plaintiffs alleged that the City violated the City Charter and Municipal Code from fiscal year ending 1997 to the present by failing to contribute an annual amount to SDCERS as calculated by the SDCERS actuary. Instead, the City had been contributing to SDCERS an amount determined pursuant to two agreements between the City and SDCERS: “Managers Proposal I,” effective fiscal year ending 1997, and “Managers Proposal II,” which superceded Managers Proposal I and was entered into on November 18, 2002.

2. The City disputes plaintiffs’ allegations. The City asserts that the City Charter requires the City to contribute to SDCERS an annual amount that is substantially equal to the amount contributed by employees for normal retirement allowances, which the City contends it has done. Further, the City contends that, because San Diego is a Charter City, the Municipal Code cannot be interpreted in a manner that conflicts with the Charter. Therefore, the City asserts that it has complied with both the City Charter and former San Diego Municipal Code Section 24.0801.

3. In *Gleason*, the plaintiffs also sought a judicial declaration that the SDCERS Board of Administration (the “SDCERS Board”) breached its fiduciary duties by entering into Managers Proposal I and II, which permitted the City to fund SDCERS at rates below the actuarially calculated contribution rates. The SDCERS Board disputes these allegations.

4. In *Gleason*, the plaintiffs also sought a judicial declaration as to the proper remedies for the City’s alleged violation of the City Charter and Municipal Code, and SDCERS’ alleged breach of its fiduciary duties. The City and SDCERS dispute that plaintiffs were entitled to any relief whatsoever.

5. In *Gleason II*, plaintiff alleged that certain members of the SDCERS Board improperly voted to approve the November 18, 2002 contract between the City and SDCERS concerning the City’s annual contribution rates (Managers Proposal II) because those Board members allegedly had a conflict of interest under the provisions of the California Political Reform Act and Government Code section 1090. The City is not a party to the *Gleason II* action. SDCERS filed an answer denying the allegations of the *Gleason II* complaint.

6. In *Wiseman*, plaintiff sought a judicial declaration that *ex officio* members of SDCERS Board, the City Manager and the City Auditor, have improperly delegated their duty to serve on the Board to senior members of their staffs. This action is asserted against the SDCERS Board. The City is not a party to this action. The SDCERS Board filed an answer denying the allegations of the *Wiseman* complaint. On or about September 23, 2003, *Gleason*, *Gleason II* and *Wiseman* were consolidated.

7. As a result of the parties’ investigation and consideration of the facts underlying the Actions and the applicable law and its uncertainties as applied to the facts in the Actions, the parties believe it is in the best interests of all parties to fully and finally settle the Actions to avoid the uncertainty, expense, burden and inconvenience of further litigation, and the potential delay that would result from the appeal of any decisions rendered by the Court or jury in the Actions.

8. SDCERS has executed this Agreement based on review and approval by SDCERS' independent fiduciary counsel, SDCERS' actuary and the SDCERS Board. The City has executed this Agreement based upon review and approval by the City Council.

II. AGREEMENT

NOW, THEREFORE, IT IS HEREBY AGREED, by and among Plaintiffs, the Settlement Class, and the Defendants that the Class Action is conditionally settled and compromised and a judgment in the form attached at Exhibit A hereto shall be entered in the Class Action, subject to the approval of the Court, on the following terms and conditions:

1. SUBJECT TO COURT APPROVAL.

a. The parties agree, solely for the purposes of the Settlement and not for any other purpose, that their counsel will jointly request that the Settlement Class (defined above) be conditionally certified pursuant to Code of Civil Procedure § 382 in the *Gleason* Action, that Plaintiffs James F. Gleason and David W. Wood shall be designated as Class Representatives, and Michael A. Conger shall be designated as Settlement Class Counsel.

b. The Parties agree that in the event the settlement contemplated by this Agreement (the "Settlement") is not finally approved by the Court, the Settlement Class will be automatically de-certified and the City and SDCERS will have the right to challenge any future request for class certification on all possible grounds. If the Settlement is not approved by the Court or otherwise not completed, this Agreement and any evidence of the Parties' participation in this Agreement shall be inadmissible for any purpose in any aspect of the Actions and also pursuant to the provisions of Evidence Code §§ 1152 and 1154.

c. Counsel for the Class Plaintiffs shall prepare and, after approval by all counsel, file a Stipulation for Conditional Certification of Settlement Class and Approval of Settlement. The Defendants' counsel shall cooperate and assist with the Stipulation as necessary and appropriate. All counsel shall use their best efforts to obtain court approval of the Settlement.

2. NON OPT OUT CLASS AND NOTICE OF SETTLEMENT.

a. Because the form of relief being provided by this settlement is in the nature of primary equitable relief for alleged actions that are generally applicable to the entire Settlement Class, the parties have agreed to settle in the manner of a "Federal Rule 23(b)(2)" settlement, which does not require that members of the Settlement Class receive notice of the class certification and the opportunity to opt out of the Settlement Class. This provision is an integral component of this Settlement.

b. After the Court tentatively approves this Settlement, SDCERS shall mail notice of the proposed Settlement to the Settlement Class, notifying members of the Settlement Class of their right to object to the settlement (the "Class Settlement Notice").

3. SETTLEMENT CONSIDERATION.

In consideration of the release set forth below in Section 4 and the other promises made herein, the Parties agree as follows:

a. The City's Annual Contributions For Fiscal Years 2005 through 2008, and Security for Performance of Charter Obligations

Under the provisions of Article IX, Section 143 of the City Charter of the City of San Diego (the "Charter"), the City is obligated to contribute for fiscal years 2006 through 2008 to SDCERS an amount derived from the rates calculated by the actuary for SDCERS in its annual valuation and approved by the SDCERS Board of Administration (the "Contribution Amount"). The City acknowledges its Charter obligation to pay the Contribution Amount for fiscal years 2006 through 2008. Such obligations are expressly limited to future fiscal years 2006 and beyond, and do not in any way create a Charter obligation to pay any amount greater than the City has already contributed (or will contribute pursuant to section 3.a.(1)) to SDCERS for any fiscal year prior to 2006. Payment of the Contribution Amounts described below are in full satisfaction of the City's Charter obligations for each fiscal year.

In addition to the terms set forth below, the City agrees to provide collateral to secure payment of the annual contribution obligation through Fiscal Year 2008.

Commencing with the June 30, 2004 Annual Actuarial Valuation, the amortization period for the Unfunded Actuarial Accrued Liability ("UAAL") will be reset to a new 30-year fixed amortization period. The City's Contribution Amount for Fiscal Years 2006, 2007 and 2008 only (the "Period"), will be based on the 30-year amortization period reset as of the June 30, 2004 Annual Actuarial Valuation. After Fiscal Year 2008, subject to any amendment to the Charter, the City will remain obligated pursuant to the Charter to contribute to SDCERS an amount derived from the rates calculated by the SDCERS actuary in its annual valuation and approved by the SDCERS Board of Administration, and SDCERS may utilize any amortization schedule it chooses, consistent with Article XVI, section 17, of the California Constitution and may implement any new, different, or modified actuarial assumptions, in consultation with its actuary, for purposes of establishing the City's annual employer contribution thereafter. The parties acknowledge that amortization schedules selected by SDCERS after Fiscal Year 2008 may be considerably shorter than 30 years, in which event there will be a substantial increase in the City's contribution amount. In calculating the contribution rates for the Period, the actuary will use the assumptions included in the experience evaluation adopted by the SDCERS Board at its February 2003 meeting.

For the purposes of this Agreement only, the Contribution Amount shall be exclusive of the payments of employee contributions paid by the City, if any, employer contributions to DROP, and any other additional contributions paid by the City on behalf of its employees.

It is the parties' intent to herewith provide for certain collateral to secure performance of the City's annual contribution obligation through SDCERS' Fiscal Year 2008. The collateral will consist of real property owned by the City unencumbered (except by leases, easements or deed restrictions) and having fair market value (using the methods described in this paragraph) of at least \$125,000,000.00 for each of SDCERS' Fiscal Years 2005, 2006, 2007 and 2008, to secure performance of the City's Charter obligation to pay the annual contribution obligation for these fiscal years, for a total collateral amount of at least \$500,000,000.00. The City shall select the collateral that will be used to secure payment of the annual contribution obligation.

The value of the collateral will be based on the property's Highest and Best Private Use determined by a Limited Appraisal and Restricted Use Report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). The City heretofore has provided SDCERS with legal descriptions, assessor's plat maps, current preliminary title reports, and a Limited Use Appraisal and Restricted Use Report for the parcels comprising the collateral. The parties hereto have accepted each of the City's parcels described in Exhibit B hereto as the collateral described above, and have agreed to the values assigned to each by the Limited Use Appraisal and Restricted Use Report (the "Report") which the City has supplied to SDCERS.

The parties will present the Report and other evidence of the value of the collateral to the Court *in camera* in connection with the Final Fairness Hearing (or such subsequent time as the Court may order) so that the Court can and does make a finding in the record as part of the settlement that: (a) the total fair market value of the collateral is not less than \$500 million; and (b) the collateral described in each of the Exhibit D, E, and F Deeds of Trust has a fair market value of not less than \$125 million.

The Report contains the Limited Use Appraised value of certain City properties and, thus the parties recognize that others may seek to obtain or use the Report for entrepreneurial purposes not in the best interests of the City or its taxpayers. It is expressly agreed that the Report only states certain values for the purpose of this settlement, and for no other reason whatsoever. The Report shall remain strictly confidential. No party or their agents, employees, attorneys or appraisers shall release or disclose the Report or the content of the Report unless compelled to do so by lawful subpoena or court order. SDCERS may release the Report to SDCERS' Boardmembers so long as SDCERS secures an express written confidentiality agreement in favor of the City from each such Boardmember which agreement prohibits the dissemination or disclosure of the Report or its contents to others. A copy of each such confidentiality agreement and the names of each person to whom the Report is given shall be promptly provided to the City's Director of Real Estate.

(1) Fiscal Year 2005 Payment

Notwithstanding any other term or provision of this Agreement to the contrary, the amount of the City's Fiscal Year 2005 contribution to SDCERS shall be the total sum of \$130 million, which shall be paid to SDCERS on July 1, 2004. All parties recognize that this amount is below the actuarially computed contribution rate for Fiscal Year 2005, but the amount represents a compromise of highly disputed contentions by all parties.

To secure payment of that \$130 million Contribution Amount for Fiscal Year 2005, the City will execute, acknowledge, record and deliver to SDCERS, within 20 days of the Court's entry of judgment approving the Agreement, a Deed of Trust in form and content as set forth on Exhibit C attached hereto and incorporated herein by reference. Within 20 calendar days after payment of the \$130 million contribution amount for Fiscal Year 2005, SDCERS will execute and deliver to the trustee under the Exhibit C Deed of Trust a request for full reconveyance thereof.

(2) Fiscal Year 2006 Payment

To secure payment on or before July 1, 2005 of the Contribution Amount for Fiscal Year 2006, the City will execute, acknowledge, record (after recordation of the Exhibit E Deed of Trust) and deliver to SDCERS, within 20 days of the Court's entry of a judgment approving the Agreement, a Deed of Trust in form and content as set forth on Exhibit D attached hereto and incorporated herein by reference. Within 20 calendar days after payment of the contribution amount for Fiscal Year 2006, SDCERS will execute and deliver to the trustee under the Exhibit D Deed of Trust a request for full reconveyance thereof.

(3) Fiscal Year 2007 Payment

To secure payment on or before July 3, 2006 of the Contribution Amount for Fiscal Year 2007, City will execute, acknowledge, record (prior to recordation of the Exhibit D Deed of Trust) and deliver to SDCERS, within 20 days of the Court's entry of a judgment approving the Agreement, a Deed of Trust in form and content as set forth on Exhibit E attached hereto and

incorporated herein by reference. Within 20 calendar days after payment of the contribution amount for Fiscal Year 2007, SDCERS will execute and deliver to the trustee under the Exhibit E Deed of Trust a request for full reconveyance thereof.

(4) Fiscal Year 2008 Payment

To secure payment on or before July 2, 2007 of the Contribution Amount for Fiscal Year 2008, the City will execute, acknowledge, record and deliver to SDCERS, within 20 days of the Court's entry of a judgment approving the Agreement, a Deed of Trust in form and content as set forth on Exhibit F attached hereto and incorporated herein by reference. Within 20 calendar days after payment of the contribution amount for Fiscal Year 2008, SDCERS will execute and deliver to the trustee under the Exhibit F Deed of Trust a request for full reconveyance thereof.

(5) Partial Reconveyance

The Deed of Trust for Fiscal Year 2006 (Exhibit D) and the Deed of Trust for Fiscal Year 2007 (Exhibit E) will, as of the date of their first recording ("Recording Date") encumber the City's title to two parcels described as Parcel 2 and Parcel 3 in the legal descriptions attached as Exhibit "A" to each such Deed of Trust. Parcel 2 currently contains approximately 81 acres, and Parcel 3 currently contains less than 5 acres. The Exhibit D Deed of Trust is intended to be second in priority on the Recording Date, and the Exhibit E Deed of Trust is intended to be first in priority on the Recording Date.

At any time after the Recording Date, the City may, but is not required to, process and implement a change to the configuration and size of Parcel 2 and Parcel 3 ("Parcel Change"). The purpose of the Parcel Change is to create two parcels of approximately equal value – being approximately 42 acres, and each with sufficient access to Friars Road to be reasonably usable for development in the future.

SDCERS will cooperate reasonably with the City if the Parcel Change is implemented, including executing documents as reasonably required as the beneficiary of the Exhibit D Deed of Trust and the Exhibit E Deed of Trust.. After the Parcel Change is completed, SDCERS will, within twenty (20) days after written request from City, execute and deliver to the City a partial reconveyance of the lien of Exhibit D Deed of Trust from Parcel 2, and a partial reconveyance of the lien of Exhibit E Deed of Trust from Parcel 3. The purpose of such partial reconveyances is to have the Exhibit D Deed of Trust encumber City's title to Parcel 3 only, and have the Exhibit E Deed of Trust encumber the City's title to Parcel 2 only. The parties agree that neither the Parcel Change nor such reconveyances are a Substitution of Collateral (as defined below in Section 3a(6)).

(6) Substitution of Collateral

(A) Conditional right to substitute collateral

So long as City is not in default under any of its obligations to pay the Contribution Amounts specified above, or otherwise under the provisions of any of the four Deeds of Trust given to secure performance of those obligations, the City may, subject to the provisions and conditions set forth below, elect to substitute collateral held by SDCERS as security for payment of any Fiscal Year's Contribution Amount.

(B) Substitution procedure

If, at any time prior to July 1, 2007, City desires to make such a substitution of collateral, City shall deliver to SDCERS' Retirement Administrator a Deed of Trust ("Replacement Deed of Trust") which is identical in form and content to that of the Deed of Trust encumbering the collateral to be replaced ("Replaced Deed of Trust"), except that the Replacement Deed of Trust shall be dated currently and shall describe real property including or consisting of real property ("Replacement Collateral") different than that described in the Replaced Deed of Trust ("Replaced Collateral"). Any request for substitution of collateral as described in this paragraph shall be published in SDCERS' regular monthly meeting agenda and all information pertaining

to the substitution request shall be publicly announced by SDCERS at the next meeting as an agenda item.

(C) Requests for reconveyance of Replaced Deed of Trust

SDCERS shall not unreasonably decline to request a full reconveyance of the Replaced Deed of trust, it being understood that a refusal to request a full reconveyance will be deemed reasonable only if the Replacement Collateral is encumbered (by other than leases, easements or deed restrictions) or has a fair market value of less than that of the Replaced Collateral, or both. The determination as to whether the Replacement Collateral is encumbered (by other than leases, easements or deed restrictions) or has a fair market value less than that of the Replaced Collateral shall be made, on behalf of SDCERS, by its Retirement Administrator utilizing values current as of the date on which the Replacement Deed of Trust is delivered. In the event SDCERS' Retirement Administrator determines that the Replacement Collateral both is unencumbered (by other than leases, easements or deed restrictions) and has a fair market value equal to or greater than that of the Replaced Collateral, SDCERS shall request a full reconveyance of the Replaced Deed of Trust immediately upon recordation and delivery to SDCERS of the Replacement Deed of Trust

(D) Resolution of disputes pertaining to reconveyance of Replaced Deed of Trust

In the event City disagrees with any determination by SDCERS' Retirement Administrator that the Replacement Collateral is either encumbered (by other than leases, easements or deed restrictions) or has a fair market value less than that of the Replaced Collateral, the matter will be submitted to a retired San Diego Superior Court Judge jointly selected by the parties for binding arbitration to be conducted pursuant to the provisions of Part III, Title 9 of the California Code of Civil Procedure, with each party bearing its own attorneys' fees and costs. In the event the arbitrator determines that the Replacement Collateral both is unencumbered (by other than leases, easements or deed restrictions) and has a fair market value equal to or greater than that of the Replaced Collateral, SDCERS shall request a

full reconveyance of the Replaced Deed of Trust immediately upon recordation and delivery to SDCERS of the Replacement Deed of Trust. In the event the arbitrator determines either that the Replacement Collateral is encumbered (by other than leases, easements or deed restrictions) or that it has a fair market value less than that of the Replaced Collateral, SDCERS shall not be required to request a full reconveyance of the Replaced Deed of Trust.

(7) Foreclosure on Collateral

The Deeds of Trust, and the obligations they secure, are not cross-collateralized; accordingly, SDCERS may foreclose under a Deed of Trust only in the event the City fails to timely pay the full Contribution Amount for the particular fiscal year mentioned in the Deed of Trust (or, in the case of the Exhibit C Deed of Trust, fails to timely pay the \$130 million contribution for Fiscal Year 2005), and only to the extent of the failed payment(s) due and owing at that time.

SDCERS acknowledges it has no right to receive rents or profits generated by the real property comprising the collateral absent default in the payment secured by any deed of trust containing an assignment of rents and profits.

b. Termination of Prior Contribution Agreements.

Upon final approval of this Agreement by the Court, the contribution agreements between the City and SDCERS known as Manager's Proposal I and Manager's Proposal II shall terminate, and be of no further force or effect.

c. Repeal of Portions of San Diego Municipal Code Section 24.0801

Within 120 days of the Court's entry of a final order approving the Agreement, the City shall repeal those portions of San Diego Municipal Code Section 24.0801 enacted November 18, 2002 which specify that rates the City pays are as agreed to in the governing Memorandum of Understanding between the City and SDCERS. The City may enact other lawful enabling ordinances as appropriate so long as such ordinances are not inconsistent with this Agreement or the Charter.

d. SDCERS' Legal Opinion.

Prior to execution of this Agreement, SDCERS will (a) have obtained an opinion from a lawyer that the security instruments and collateral securing the City's Contribution Amount described above comply with all applicable laws, including Article VII, Section 99 of the Charter; and (ii) that the security will be a valid and enforceable security obligation and duly perfected security interest, or (b) will have certified that SDCERS is unable to obtain an opinion on those subjects. The City shall pay the actual cost of obtaining the opinion (up to \$100,000.00 and no more, billed separately from any other opinions). However SDCERS' inability to obtain an opinion on the subjects shall not be a condition in any respect to this Settlement Agreement.

e. Stipulated Non Opt Out Settlement Class.

All parties stipulate to class certification of a "non opt out" class for purposes of settlement only. The settlement embodied herein applies to all members of the class in *Gleason*, and will result in a stipulated judgment in *Gleason*, *Gleason II*, and *Wiseman*, and complete releases with prejudice by all class members and plaintiffs in favor of the City and SDCERS. If the Agreement is not approved by the City, SDCERS, and the Court, this Agreement and stipulation are void and the parties resume status quo prior to entering into the stipulation. Upon the Court's final approval of this Agreement, a stipulated judgment releasing all Defendants with prejudice in accordance with this Agreement shall be entered, which will include other and additional terms necessary or reasonable to complete the settlement described herein.

f. City's Right To Control Financing

The City shall have the absolute right to finance or pay for its contributions to SDCERS in any lawful manner, including but not limited to the issuance of pension obligation bonds.

g. Attorneys' Fees

The Parties understand that Plaintiffs will, at their election, file a motion to seek attorneys' fees in the Actions. All Parties reserve their rights with respect to such fee motion, and agree that the Court will decide all issues related to attorneys' fees and costs not otherwise set forth herein. The Defendants agree that the Plaintiffs' counsel is entitled to recover

attorneys' fees and costs in the Actions under Code of Civil Procedure section 1021.5 (hereinafter the "Entitlement"). If the amount of such fees and costs cannot be determined by agreement, the amount will be determined by the Court upon a duly noticed motion. In such motion, the Defendants reserve the right to contest the amount of the fees and costs that should be awarded to the Plaintiffs' counsel, and how the Court's award of fees and costs should be apportioned between the Defendants. Notwithstanding section 3.h below, all Parties shall be permitted to conduct discovery in connection with and related only to any fee and cost motion Plaintiffs file. Defendants will and do dispute that Plaintiffs' counsel is entitled to any "multiplier" of fees, though Plaintiffs' counsel will seek such multiplier. All parties agree that Plaintiffs counsel are not entitled to request or receive a "multiplier" for any period after April 26, 2004.

h. Discovery and Hearings.

No further discovery will be taken in the Actions, and no previously taken discovery in the Actions will be released to the media by the parties or counsel, except as required by law. All pending motions and hearings, except those motions and hearings required to effectuate the purpose of this Agreement, shall be vacated.

4. **MUTUAL RELEASES**

Effective upon Court approval of this Agreement and the settlement, and in full, complete, and final compromise and settlement of any and all claims, Plaintiffs, individually and on behalf of the Settlement Class, and each member of the Settlement Class, together with their children, heirs, successors in interest, and assigns hereby release, discharge and dismiss with prejudice the City and SDCERS and/or their respective successors in interest, assigns, employees, agents, trustees, administrators and representatives, including, without limitation, former *Gleason* individual defendants Frederick Pierce IV, John Torres, John Casey, David Crow, Mary Vattimo, Ron Saathoff, Terri Webster, Cathy Lexin, Sharon Wilkinson, Richard (aka "Dick") Vortmann, and Ray Garnica, from any and all claims, actual or potential, that arise from the facts alleged in the complaints in the Actions, any existing or potential claims relating

to the City's past annual contributions to SDCERS, or to actions by SDCERS or the City concerning the purchase of service credits by members of SDCERS (hereinafter the "Claims"). However, nothing in this release shall affect or release any claims the Plaintiffs, the Settlement Class, or SDCERS may have against Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, Robert Blum, or Constance Hiatt, which such potential claims are hereby expressly reserved. The City and SDCERS also release any and all claims against James Gleason, David Wood, and or Rosado Wiseman, actual or potential, that arise from the facts alleged in the complaints in the Actions.

5. WAIVERS OF CALIFORNIA CIVIL CODE SECTION 1542.

It is a condition of the consideration hereof, and is the intention of Plaintiffs individually, and on behalf of the Settlement Class on whose behalf Plaintiffs are executing this Agreement, that this Agreement shall be effective as a complete release and settlement of all claims, actions, causes of action, or potential claims, actions or causes of action, whether known or unknown, relating to the facts alleged in the Actions, or the Claims, which Plaintiffs and the Settlement Class now have or have had in the past, or might have in the future against the City and SDCERS and/or their respective successors in interest, assigns, employees, agents, trustees, administrators and representatives, including, without limitation, former *Gleason* individual defendants Frederick Pierce IV, John Torres, John Casey, David Crow, Mary Vattimo, Ron Saathoff, Terri Webster, Cathy Lexin, Sharon Wilkinson, Richard (aka "Dick") Vortmann, and Ray Garnica. In furtherance of this intention, which may be asserted by and between the parties hereto and/or their successors, heirs and/or assigns, the Plaintiffs, on behalf of themselves and the Settlement Class, expressly, knowingly and voluntarily waive any and all rights and /or benefits conferred upon Plaintiffs and the Settlement Class by Section 1542 of the California Civil Code.

Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING
THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE

MATERIALLY AFFECTED THIS SETTLEMENT WITH THE
DEBTOR.

Plaintiffs acknowledge that their legal counsel has advised them of and that they are familiar with the provisions of Section 1542 of the California Civil Code, and that, being aware of that Section, Plaintiffs expressly waive any and all rights and benefits conferred by that Section on behalf of themselves individually, and on behalf of the Settlement Class. However, nothing in this release shall affect or release any claims the Plaintiffs, the Settlement Class, or SDCERS may have against Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, Robert Blum, or Constance Hiatt, which such potential claims are hereby expressly reserved.

6. ORDER APPROVING SETTLEMENT AGREEMENT.

The Parties agree that this Agreement is contingent upon the Court's entry of a judgment approving the Agreement, which shall be referred to herein as the "Judgment" in the form of Exhibit A attached hereto. If the Court conditions its approval of the Settlement Agreement on any new or different terms or does not certify a non-opt out class, the parties shall and do each have the right to reject such terms. In such case, this Agreement shall terminate and (1) any evidence of the Parties participation in this Agreement shall not be admissible for any purpose in any aspect of the Actions, and (2) the certification of this Settlement Class shall be deemed void, and the Settlement Class deemed de-certified.

7. CONTINUING JURISDICTION.

The Court shall have continuing jurisdiction to supervise and effectuate the implementation of the Agreement and/or to resolve any disputes between the parties with respect to the interpretation of the Agreement. However, the Court's continuing jurisdiction pursuant to this provision shall not affect the date for entry of the Judgment, nor the date by which an appeal must be filed from the Judgment or any other order, ruling, or decision in the Actions.

8. AGREEMENT IS NOT AN ADMISSION.

This Agreement, its constituent provisions, and any and all drafts, communication and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission

or concession by any party, including the City or SDCERS, and shall not be offered or received in evidence or requested in discovery in these Actions or any other action or proceeding as evidence of such and admission or concession. Instead, the purpose of this Agreement is to accomplish the compromise and settlement of disputed and contested claims. Nothing in this Agreement shall be construed as an admission by any party to this Agreement of any liability of any kind to any other party to this Agreement. Each party to this Agreement denies the allegations of each other party as set forth in the Actions and further denies that such party is liable to the remaining parties in any respect whatsoever for the harm or damages that may have been sustained by any other party relating to the Actions, or the circumstances set forth in the Recitals section above.

9. SETTLEMENT NOT APPROVED.

This Agreement shall be withdrawn and terminated and shall be deemed null and void if (a) the Court does not approve the Settlement, or (b) no judgment approving the Agreement becomes final. Once the Judgment is entered it shall be fully in force and enforceable unless it is stayed by a court having jurisdiction of the matter, notwithstanding Code of Civil Procedure section 916. The parties acknowledge that other than by applying for a discretionary stay, a stay of the Judgment could not be obtained except by complying with Code of Civil Procedure sections 917.1, 917.3, 917.4, and 917.6; the parties waive all their rights to seek a stay or to assert that any parties are exempt from those sections. If the settlement provided for herein is not approved by the Court in complete accord with the terms of this Agreement and does not become a Final Order following such approval, no class will be certified pursuant to this Agreement or, if previously certified, such certification will be deemed to have been only for purposes of this particular Agreement and void for all other purposes and the Court shall de-certify the Class which would have been certified pursuant to this Agreement. Even if no Court order de-certifying the class has been entered, the Settlement Class will be deemed to have been de-certified. In such event, the City and SDCERS will not be deemed to have consented to certification of any class, and will retain all rights to conduct discovery related to any class

certification, object to or oppose any motion for class certification, and to take all necessary actions including but not limited to certification of one identical to the Settlement Class.

10. PARTIES' RIGHTS TO SET ASIDE SETTLEMENT.

It is agreed that any of the Parties have the right to set aside or rescind this Agreement if modifications to this Agreement are required by the Court or by any appellate court, which are determined by that Party in its sole and absolute discretion to be unacceptable and material.

11. ENTIRE AGREEMENT; AMENDMENT.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements, understandings, representations and negotiations, oral or otherwise, among or between any of the Parties or their counsel relating to the subject matter of this Agreement, including but not limited to that certain Term Sheet of February 19, 2004. This Agreement cannot be changed or modified except by a writing signed by all Parties.

12. COUNTERPARTS.

This Agreement may be executed in any number of counterparts and will be binding when it has been executed by the last party to execute the Agreement. A copy or facsimile signature shall be deemed to have the same force and effect as an original signature.

13. VOLUNTARY AGREEMENT.

The signatories to this Agreement warrant and represent that they each are effecting this Settlement and executing this Agreement after having received full legal advice as to their respective rights from their attorneys. SDCERS has had a full and fair opportunity to discuss, and has discussed, the effect and terms of this Agreement with its chosen counsel, Seltzer, Caplan, McMahon Vitek, with their independent litigation representative, Nell Hennessy, and with their separate fiduciary counsel, Pillsbury Winthrop, LLP. The City has had a full and fair opportunity to discuss, and has discussed, the effect and terms of this Agreement with its chosen counsel, Luce, Forward, Hamilton & Scripps LLP. The Plaintiffs and Plaintiff Class have had a

full and fair opportunity to discuss, and have discussed, the effect and terms of this Agreement with their chosen counsel, Michael A. Conger. The Parties hereto further represent and declare that they have carefully read this Agreement and know its contents, and that they are executing this Agreement freely and voluntarily and for no other reason than the consideration set forth herein.

14. CONSTRUCTION OF AGREEMENT.

This Agreement is the product of negotiation and preparation by and among each party and its respective attorneys. Therefore, the Parties acknowledge that this Agreement shall not be deemed prepared or drafted by one party or another and should be construed accordingly.

15. SEVERABILITY.

In the event any one or more of the provisions contained in this Agreement (other than, and excepting, the provisions of Section 3 relating to Settlement Consideration) shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision unless the effect of the determination that the provision is invalid, illegal, or unenforceable, has the effect of depriving any of the parties to this Agreement of material benefits under the Agreement. In that event, unless the Parties are able to reach a mutual agreement to revise the Agreement satisfactorily to all parties within 30 (thirty) days of notice of the declaration of invalidity, illegality or unenforceability, of any provision(s), then the entire Agreement shall be deemed invalid, unenforceable, and automatically rescinded.

16. CONTROLLING LAW.

This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California.

17. WAIVER AND AGREEMENT.

No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of the same or other provision of this Agreement.

18. CAPTIONS.

Paragraph titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only, and in no way define, limit, extend or describe the scope of this Agreement or any provision thereof.

19. MUTUAL INTERPRETATION.

The Parties agree and stipulate that this Agreement was negotiated on an arm's-length basis between parties of equal bargaining power. The Agreement shall be mutually interpreted and not construed in favor or against any of the Parties. It is the intent of all Parties that this Settlement have full res judicata and collateral estoppel effect with respect to all allegations asserted in the Actions.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement:

JAMES F. GLEASON, individually and on
behalf of the Settlement Class

DAVID W. WOOD, individually and on behalf
of the Settlement Class

ROSADO WISEMAN

**THE CITY OF SAN DIEGO , pursuant to
an affirmative majority vote of the City
Council of the City of San Diego made May
__, 2004:**

By: _____
Its: _____

**THE SAN DIEGO CITY EMPLOYEES'
RETIREMENT SYSTEM, pursuant to an
affirmative majority vote of its Board of
Administration on May __, 2004**

By: _____
Its: _____

**THE BOARD OF ADMINISTRATION FOR
THE CITY OF SAN DIEGO CITY
EMPLOYEES' RETIREMENT SYSTEM,
pursuant to its affirmative majority vote on
May __, 2004**

By: _____
Its: _____

APPROVED AS TO FORM:

**LAW OFFICES OF MICHAEL A.
CONGER**

Michael A. Conger,
Settlement Class Counsel, and Attorney for
Plaintiffs James F. Gleason and David Wood,
individually and on behalf of the Settlement
Class, and Rosado Wiseman

**SELTZER, CAPLAN McMAHON &
VITEK LLP**

By: _____
Reg A.Vitek
Michael Leone
Attorneys for The San Diego City
Employees' Retirement System, and Board
of Administration for The San Diego City
Employees' Retirement System

**LUCE, FORWARD, HAMILTON &
SCRIPPS LLP**

By: _____
Timothy R. Pestotnik
Russell Gold
Attorneys for The City of San Diego

EXHIBIT A

(To be completed later)

EXHIBIT B

2005.....Sports Arena Village
Water Operations Facility
Charger Practice Facility
World Trade Center
Sander Site
2.82 acres at the SE corner of Mission City Parkway at Camino del Rio N

2006..... Qualcomm Parking Lot 2nd

2007.....Qualcomm Parking Lot 1st

2008.....Metro Operations Center
Ridgehaven Office Bldg
Sports Arena and Parking Lot
Fairbanks Ranch Country Club

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